

# EXHIBIT E

**HEARING DATE:** September 22, 2017 at 9:30 a.m.

**STATE OF RHODE ISLAND  
WASHINGTON, S.C.**

**SUPERIOR COURT**

KATHERINE L. CAITO,

v.

C.A. No. WC 16-0061

ONE LOT OF REAL ESTATE  
REFERENCED AS PLAT: 3 LOT: 2419  
OF WESTERLY TAX ASSESSOR  
LOCATED AT 16 YOSEMITE VALLEY  
ROAD, WESTERLY, RHODE ISLAND.

**CREDITOR, CITIBANK, N.A., AS TRUSTEE'S, MOTION TO APPROVE AMENDED  
PROOF OF CLAIM AND TO AUTHORIZE CREDIT BID**

Creditor, Citibank, N.A., as Trustee for American Home Mortgage Assets Trust 2006-3, Mortgage Backed Pass-Through Certificates Series 2006-3 ("Citibank"), hereby moves this Court for an order: (1) approving Citibank's claim on the property located at 16 Yosemite Valley Road, Westerly, Rhode Island (the "Property") as a first priority secured claim, as more fully set forth in the Amended Proof of Claim; and (2) authorizing Citibank to credit bid to the full amount of its secured claim in any sale of the Property. Citibank asserts a secured claim in the amount of five million seven hundred ninety-two thousand two hundred eighty-eight dollars and eighty-seven cents (\$5,792,288.87), as of August 9, 2017, secured by a first priority mortgage, dated June 6, 2006, and recorded in the Land Evidence Records for the Town of Westerly on June 12, 2006 at Book 1541, Page 252 (the "Mortgage"). In addition to the outstanding balance owed to Citibank on the mortgage loan, Citibank has incurred one hundred six thousand five hundred eighteen dollars and eighty one cents (\$106,518.81) to date in attorney's fees in protecting its secured interest. These amounts combine for a total secured claim of five million

eight hundred ninety eight thousand eight hundred seven dollars and sixty eight cents (\$5,898,807.68). Assuming this Court approves Citibank's Amended Proof of Claim, Citibank further seeks an order authorizing Citibank to credit bid the full amount of its allowed secured claim in any sale of the Property.

As grounds for this Motion, Citibank states as follows:

1. In Rhode Island state receivership proceedings, courts will generally approve a proof of claim if the claimant satisfies the evidentiary burden through the production of supporting documents, including but not limited to promissory notes, mortgages, and security agreements. *See Smith v. CAS, LLC*, No. NB-2014-0170, 2015 R.I. Super. LEXIS 101, at \*6-8 (R.I. Super. Aug. 5, 2015) (Stern, J.) (citing *In re Armstrong*, 320 B.R. 97, 103 (Bankr. N.D. Tex. 2005)).

2. On June 6, 2006, Petitioner executed a promissory note (the "Note") through which she promised to repay, with interest, the principal sum of \$4,500,000.00 to American Brokers Conduit. (Promissory Note, *Exhibit A*.)

3. To secure her repayment obligations under the Note, Petitioner mortgaged, granted and conveyed the Property via the Mortgage to Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for American Brokers Conduit and American Brokers Conduit's successors and assigns. (Mortgage, *Exhibit B*.)

4. On August 27, 2012, MERS, as nominee, assigned its interest in the Mortgage to Citibank via an Assignment of Mortgage or Deed of Trust (the "Assignment") recorded in the Land Evidence Records for the Town of Westerly on October 9, 2012 at Book 1932, Page 724. (Mortgage Assignment, *Exhibit C*.)

5. As of August 9, 2017, Petitioner owed Citibank a balance of \$5,792,288.87. (Payoff Quote, *Exhibit D.*) Interest on the amounts owed on the Note continue to accrue.

6. In addition to the amounts owed on the Note, Citibank has incurred \$106,518.81 in attorney's fees recoverable under paragraphs 9 and 14 of the Mortgage in defending its interest in the Property and responding to several actions and proceedings commenced by Petitioner. Citibank continues to incur attorney's fees and costs in protecting its secured interest in the Property.

7. The amounts set forth above combine for a total sum of \$5,898,807.68. Citibank submitted its Amended Proof of Claim to the Receiver in accordance with this Court's instruction on August 11, 2017. (Amended Proof of Claim, *Exhibit E.*)

8. Accordingly, Citibank seeks an order approving the Amended Proof of Claim, as a secured claim with priority, in the full amount of \$5,898,807.68, inclusive of interest and attorney's fees and costs.

9. Citibank further seeks authorization to credit bid on behalf of Citibank up to the amount of Citibank's allowed secured claim in any Receiver's sale of the Property.

10. A secured creditor is permitted in Rhode Island receivership proceedings to credit bid on the collateral securing its claim. *See Patel v. Shivai Nehal Realty LLC*, No. KB-2012-0301, 2012 R.I. Super. LEXIS 163, \*18 (R.I. Super. Oct. 26, 2012) (Stern, J.) (relying on 11 U.S.C. 363(k) of Bankruptcy Code to support proposition that creditor's right to credit bid on assets is "common practice.").

11. With no cause to deprive Citibank of its right to credit bid on the Property, Citibank requests this Court grant its request to credit bid up to the amount of its approved secured claim.

WHEREFORE, Citibank respectfully requests that this Court enter an order:

- a. Approving the Amended Proof of Claim of Citibank in the amount of \$5,898,807.68 as of August 9, 2017, plus continuing interest, attorney's fees and costs as a secured claim, with priority as to the Property;
- b. Authorizing Citibank to credit bid up to the amount of Citibank's allowed secured claim in any Receiver's sale of the Property; and
- c. Granting Citibank any such further relief as may be reasonable and necessary under the circumstances.

Respectfully submitted,

CITIBANK, N.A., AS TRUSTEE FOR  
AMERICAN HOME MORTGAGE  
ASSETS TRUST 2006-3, MORTGAGE  
BACKED PASS-THROUGH  
CERTIFICATES SERIES 2006-3,

By Its Attorneys,

/s/ Ethan Z. Tieger

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Dated: September 14, 2017

**CERTIFICATE OF SERVICE**

I, Ethan Z. Tieger, hereby certify that on this 14th day of September, 2017:

☒ I filed and served this document through the electronic filing system on the following:

John B. Ennis, Esq.  
1200 Reservoir Avenue  
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William J. Delaney, Esq.  
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*Counsel to Petitioner Katherine L. Caito*

*Permanent Receiver*

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☐ I mailed or ☐ hand-delivered this document to the attorney for the opposing party and/or opposing party if self-represented, whose name is \_\_\_\_\_ at the following address \_\_\_\_\_.

/s/ Ethan Z. Tieger  
Ethan Z. Tieger